

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

FRANCISCO MARTINEZ,

*Plaintiff,*

VS.

KILOLO KIJAKAZI, ACTING  
COMMISSIONER, SOCIAL SECURITY  
ADMINISTRATION;

*Defendant.*



SA-21-CV-00716-JKP

## ORDER

Before the court is Plaintiff's application to proceed *in forma pauperis* [#1] and Plaintiff's Motion for Appointment of Counsel [#2]. This case was automatically referred to the undersigned upon filing, and the undersigned has authority to enter this order pursuant to 28 U.S.C. § 636(b)(1)(A). Plaintiff seeks leave to proceed *in forma pauperis* ("IFP") based on an inability to afford court fees and costs and asks the Court to appoint him counsel to represent him in this case. Having considered Plaintiff's application and supporting affidavit, the Court is of the opinion the motions should be granted.

All parties instituting any civil action, suit, or proceeding in a district court of the United States, except an application for a writ of habeas corpus, must pay a filing fee of \$350, as well as an administrative fee.<sup>1</sup> *See* 28 U.S.C. § 1914(a). Plaintiff's motion to proceed IFP includes income and asset information, which indicates that Plaintiff does not have sufficient monthly resources available to pay the filing fee. The Court will therefore grant the motion to proceed IFP.

<sup>1</sup> The administrative fee, which is currently \$50, is waived for plaintiffs who are granted IFP status. *See District Court Miscellaneous Fee Schedule*, available at <http://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule>.

The Court will also grant Plaintiff's motion requesting appointment of counsel. Plaintiff's proposed Complaint indicates that he has been receiving Disability Insurance Benefits, but the Social Security Administration recently terminated his benefits. By this lawsuit, Plaintiff is appealing the termination decision of the Commissioner of Social Security. Plaintiff attempted to secure counsel by contacting an attorney, but Plaintiff could not afford the legal fees associated with the representation.

There is no right to the automatic appointment of counsel in a civil case. *Akasike v. Fitzpatrick*, 26 F.3d 510, 512 (5th Cir. 1994); *Cupit v. Jones*, 835 F.2d 82, 86 (5th Cir. 1987). However, courts have the discretion to appoint counsel pursuant to 28 U.S.C. § 1915(e)(1) in *in forma pauperis* proceedings. The Court finds that appointment of counsel in this case will further the administration of justice.

**IT IS THEREFORE ORDERED** that Plaintiff's application to proceed *in forma pauperis* [#1] is **GRANTED**.

**IT IS FURTHER ORDERED** that Plaintiff's complaint shall be filed by the Clerk without prepayment of fees, costs or the giving of security, and the Clerk shall, until further Order of this Court, waive the collection of any other fees or costs from Plaintiff.

**IT IS FURTHER ORDERED** that Plaintiff's Motion for Appointment of Counsel [#2] is **GRANTED**.

**IT IS FURTHER ORDERED** that the following attorney is **APPOINTED** to represent Plaintiff in this case:

Oscar L. Cantu  
1004 S. St. Mary's  
San Antonio, Texas 78205  
(210) 846-0356  
[R3oscar@aol.com](mailto:R3oscar@aol.com)

**IT IS FURTHER ORDERED** that the Clerk forward a copy of this Order to Mr. Cantu.

**IT IS FURTHER ORDERED** that Mr. Cantu contact Plaintiff within **21 days** of the date of this Order.

**IT IS FINALLY ORDERED** that, within **ten days** of the date of this Order, Plaintiff shall do one of the following to ensure service of his Complaint on Defendant:

- Submit to the Clerk's Office a fully completed **United States Marshal Service Form 285**, including fully complete addresses, for each Defendant required to be served and the United States Marshal's Service shall serve each defendant with a copy of the Complaint and a copy of this order by certified mail, return receipt requested. Plaintiff is informed that federal law requires service of his Complaint and summons on the following offices:

The Attorney General of the United States  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530-0001

The United States Attorney  
601 NW Loop 410, Suite 600  
San Antonio, TX 78216

Commissioner of the Social Security Administration  
c/o Office of the Regional Chief Counsel, Region VI  
Social Security Administration  
1301 Young Street, Ste. A-702  
Dallas, TX 75202-5433

- Through counsel, request issuance of summons from the Clerk and serve each Defendant required to be served with a copy of the summons, complaint, and a copy of this Order by certified mail, return receipt requested, if possible.

**IT IS SO ORDERED.**

SIGNED this 3rd day of August, 2021.



ELIZABETH S. ("BETSY") CHESTNEY  
UNITED STATES MAGISTRATE JUDGE